

REMARKS

Claims 1, 3, 4, 7-38, 40, 41, 44-80, 82, and 84-106 are pending.¹ Claims 38, 40, 41, 44-80, and 82 are withdrawn as being directed to a non-elected invention. Claims 1, 3, 4, 7-37, and 84-94 are rejected for obviousness-type double patenting over claims 1-34 and 37-41 of U.S. Serial No. 10/298,112 (now U.S. Patent No. 7,582,309). By this reply, Applicants request rejoinder of withdrawn claims 38, 40, 41, 44-80, and 82 and address the Examiner's rejection.

Rejoinder

Claims 38, 40, 41, 44-80, and 82 are withdrawn from consideration. In response to the Restriction Requirement mailed on October 16, 2007, Applicants were required to choose between four invention groups. Applicants elected the claims of Group I directed to an osteoinductive powder. Applicants have amended withdrawn claims 38, 40, 41, 44-80, and 82 during prosecution to include the same limitations as examined claims 1, 3, 4, 7-37, and 84-106. Thus, upon the allowance of claims 1, 3, 4, 7-37, and 84-106, Applicants respectfully request reconsideration of the restriction requirement and rejoinder and allowance of withdrawn claims 38, 40, 41, 44-80, and 82 (see M.P.E.P. § 821.04).

Information Disclosure Statement

Applicants note that the Form PTO-1449 that was submitted with an Information Disclosure Statement on December 23, 2009, has not been initialed and returned, and hereby requests that it be initialed and returned with the next communication.

Obviousness-Type Double Patenting

The Examiner rejects claims 1, 3, 4, 7-37, and 84-94 for obviousness-type double patenting over claims 1-34 and 37-41 of U.S. Serial No. 10/298,112 (now U.S. Patent No. 7,582,309). In response to this rejection, Applicants submit a terminal disclaimer herewith, waiving the terminal portion of the term of the entire patent to be granted upon the above-

¹ Withdrawn claims 40 and 41 and claims 95-106, which were added as new claims in the Reply to Final Office Action filed on June 8, 2009, were omitted from the list of pending claims on the Office Action Summary page in the present Office Action.

identified application subsequent to the expiration date of U.S. Patent No. 7,582,309. In light of the terminal disclaimer, Applicants respectfully request that the rejection of claims 1, 3, 4, 7-37, and 84-94 for obviousness-type double patenting be withdrawn.

CONCLUSION

In view of the above remarks, Applicants respectfully submit that present claims 1, 3, 4, 7-38, 40, 41, 44-80, 82, and 84-106 are in condition for allowance, and such action is respectfully requested.

A petition to extend the period for replying for two months, to and including February 9, 2010, is submitted herewith. Applicants authorize the Office to deduct the fee required by 37 C.F.R. § 1.17(a) for the petition from Deposit Account No. 03-2095.

Applicants also authorize the Office to deduct the fee of \$70.00 required by 37 C.F.R. § 1.20(d) for the terminal disclaimer from Deposit Account No. 03-2095.

If there are any additional charges, or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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